

JAP:AHT

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**M-09-447**

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UNITED STATES OF AMERICA

COMPLAINT AND AFFIDAVIT  
IN SUPPORT OF APPLICATION  
FOR ARREST WARRANT

- against -

JOSE RIOS,

(T. 18, U.S.C.  
§§ 922(g)(1))

Defendants.

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EASTERN DISTRICT OF NEW YORK, SS:

ISMAEL HERNANDEZ, being duly sworn, deposes and says that he is a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"), duly appointed according to law and acting as such.

Upon information and belief, on or about May 2, 2009, within the Eastern District of New York, the defendant JOSE RIOS, having been convicted in a court of a crime punishable by imprisonment for a term exceeding one year, did knowingly and intentionally possess in and affecting commerce a firearm, to wit: a 25-caliber semi-automatic pistol.

(Title 18, United States Code, Section 922(g)(1)).

The source of your deponent's information and the grounds for his belief are as follows<sup>1</sup>:

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<sup>1</sup>/Because this affidavit is being submitted for the limited purpose of establishing probable cause to arrest JOSE RIOS as described in greater detail below, I have not set forth every

1. I have been a Special Agent with ATF for approximately eight years. My information in this case comes from reviews of records of the New York City Police Department ("NYPD"), conversations with NYPD officers, and other official records of government agencies.

2. On or about May 2, 2009, at approximately 12:45 p.m., New York City Police Department ("NYPD") Officer Anthony D'Esposito of the 73<sup>rd</sup> Precinct was on routine patrol in a marked patrol vehicle with another officer in the vicinity of Pitkin Avenue and Junius Street in Brooklyn, New York. At approximately that time, Officer D'Esposito observed two males riding bicycles on the sidewalk.

3. Officer D'Esposito and his partner, NYPD Officer Joseph Weldon, then exited their vehicle and approached the two men in order to issue them a summons. At the same time, Sergeant John Portalatin and Police Officer Arthur Umlauf arrived at the scene on bicycles. Upon reaching the two men, Officer D'Esposito asked the defendant to step off the bicycle. As the defendant stepped off his bicycle, Officer D'Esposito saw the outline of what appeared to be a firearm in the defendant's left front pocket. Officer D'Esposito then asked then defendant if he had

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fact learned during the course of this investigation.

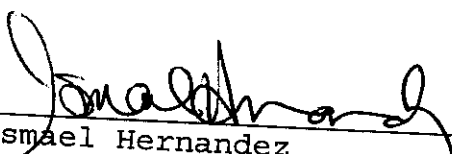
anything on him, and the defendant stated, in sum and substance, "It's not loaded. It's just a misdemeanor." Officer D'Esposito then reached to the outside of the defendant's left front pocket and felt what seemed to be a pistol. Sergeant Portalatin then reached into the defendant's left front pocket and recovered a semiautomatic pistol. The pistol was not loaded.

4. Officers D'Esposito and Umlauf then arrested the defendant and brought the defendant and the pistol back to the 73<sup>rd</sup> Precinct. At the 73<sup>rd</sup> Precinct, the pistol was identified as a .25-caliber semiautomatic pistol.

5. The defendant is currently being held in state custody. I have reviewed criminal history records for the defendant, which reveal that the defendant has been convicted of at least six felonies, punishable by a term of imprisonment of more than one year. These felonies included the following crimes: on June 1, 2004, the defendant was convicted in Queens County Supreme Court of Aggravated Criminal Contempt, a Class D felony, and Assault in the Second Degree, a Class D felony; on September 5, 1997, the defendant was convicted of Attempted Burglary in the Second Degree, a Class D felony, and Criminal Possession of a Controlled Substance in the Fifth Degree, a Class D felony.

6. I am an ATF interstate nexus expert, and the above-mentioned .25-caliber semiautomatic pistol was manufactured outside the State of New York.

WHEREFORE, your deponent respectfully requests that an arrest warrant be issued for the defendant JOSE RIOS, so that he may be dealt with according to law.

  
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Ismael Hernandez  
Special Agent  
Bureau of Alcohol, Tobacco,  
Firearms, and Explosives

Sworn to before me this  
6th day of May, 2009

  
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UNITED STATES MAGISTRATE JUDGE  
EASTERN DISTRICT OF NEW YORK